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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA  
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12 CITY BEVERAGES LLC, d/b/a Olympic  
13 Eagle Distributing, a Missouri limited  
14 liability company with its principal place of  
15 business in Washington

16                  Plaintiff,

17                  v.

18 CROWN IMPORTS LLC, d/b/a  
19 Constellation Brands Beer Division, a  
20 Delaware corporation with its principal  
21 place of business in Illinois;  
22 CONSTELLATION BRANDS, Inc, a  
23 Delaware corporation with its principal  
24 place of business in New York

Defendants.

CASE NO. 3:22-cv-05756-DGE  
ORDER ON DEFENDANTS'  
MOTION FOR  
RECONSIDERATION (DKT. NO.  
46) AND PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION  
(DKT. NO. 4)

20                   **I           INTRODUCTION**

21                  This matter comes before the Court on Plaintiff Olympic Eagle Distributing's  
22 ("Olympic") motion for a preliminary injunction (Dkt. No. 4). For the reasons stated herein, the  
23 Court GRANTS Olympic's motion and DENIES Defendants Constellation Brands Beer Division  
24 ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION (DKT. NO. 46) AND PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION (DKT. NO. 4) - 1

1 and Constellation Brands Inc.’s (together “Constellation”) motion for reconsideration (Dkt. No  
 2 46) of the Court’s temporary restraining order as moot.<sup>1</sup>

## 3 II BACKGROUND

4 Since 2003, Olympic has overseen “distributing, marketing, advertising, and  
 5 merchandizing Constellation Brands beer in Olympic’s designated Pierce and King County  
 6 distribution territory.” (Dkt. No. 4 at 10.) By letter dated September 8, 2022, Constellation  
 7 informed Olympic it was terminating the October 22, 2003, Distribution Agreement. (Dkt. No.  
 8 5-4 at 2.) Constellation also stated Olympic had 60 days from the date of the letter to transfer all  
 9 rights to another distributor, “subject to Constellation’s approval.” (*Id.*) The letter did not state  
 10 the termination was for cause, without cause, or because Olympic failed to meet its obligations  
 11 under the Distribution Agreement; in essence, no information was provided. (*See id.*)

12 As described in the Complaint:

13 [A] few days after it received the termination notice, Olympic Eagle received a call  
 14 from the CEO of its largest competitor, Columbia Beverages. When Olympic  
 15 Eagle’s CEO, Steve Knight, returned the call, Columbia’s CEO Chris Steffanci said  
 his company was Constellation’s ‘preferred buyer,’ and he offered to pay seven  
 times 12 months trailing earnings, which would be about \$70 million.

16 (Dkt. No. 1 at 3.)

17 Under the Wholesale Distributor/Supplier Equity Agreement Act, RCW Chapter 19.126  
 18 (the “Act”), a distributor terminated for any reason other than cause is entitled compensation  
 19 from the successor distributor for the fair market value of the rights. Wash. Rev. Code §  
 20 19.126.040(4).

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22 <sup>1</sup> The Court’s prior order noted “[t]he temporary restraining order shall remain in effect until this  
 23 Court issues a ruling on Olympic Eagle’s Motion for a Preliminary Injunction (Dkt. No. 4).” (Dkt.  
 24 No. 45 at 3.) Having ruled on Plaintiff’s motion for a preliminary injunction, the Court’s prior  
 temporary restraining orders are moot.

### III DISCUSSION

#### A. Preliminary Injunction Legal Standard

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party seeking a preliminary injunction must establish (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) a balance of equities tips in favor of a preliminary injunction; and (4) that an injunction is in the public interest. *Id.* at 20; *see also Coffman v. Queen of Valley Med. Ctr.*, 895 F.3d 717, 725 (9th Cir. 2018).

The Ninth Circuit also articulated an alternative “sliding scale” approach pursuant to which the first and third *Winter* factors are analyzed on a continuum; under such standard, a weaker showing on the merits, combined with a stronger demonstration on the balancing test, might warrant preliminary injunctive relief, assuming the second and fourth Winter elements are met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011). Under this “sliding scale” method, the movant need only raise “serious questions going to the merits,” but the balance of hardships must tip “sharply” in the movant’s favor. *Id.* at 1131-32; *see also Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012).

### **B. Likelihood of Success on the Merits**

#### 1. The Wholesale Distributor/Supplier Equity Agreement Act

The Act “governs the relationship between suppliers of malt beverages and spirits and their wholesale distributors[.]” Wash. Rev. Code § 19.126.010(2). The Act provides wholesale distributors certain protections “which are deemed to be incorporated into every agreement of distributorship[.]” Wash. Rev. Code § 19.126.040.

The Act states:

(1) Agreements between wholesale distributors and suppliers must be in writing;

(2) A supplier must give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5) or results from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor. The notice must state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor has sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by the supplier. [ ];

(4) If an agreement of distributorship is terminated, canceled, or not renewed for any reason other than for cause, failure to live up to the terms and conditions of the agreement, or a reason set forth in RCW 19.126.030(5), the wholesale distributor is entitled to compensation from the successor distributor for the laid-in cost of inventory and for the fair market value of the terminated distribution rights. [ ];

(5) When a terminated distributor is entitled to compensation under subsection (4) of this section, a successor distributor must compensate the terminated distributor for the fair market value of the terminated distributor's rights to distribute the brand, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights for the brand. [ ].

§§ 19.126.040(1)-(5).

The Parties dispute whether the Act permits a covered supplier to terminate a distribution agreement without cause. Olympic argues the Distribution Agreement was a nationwide form contract used in multiple states and any language Constellation relies on allegedly allowing it to terminate without cause is included in the event the State's statute permits termination without cause. (Dkt. Nos. 26 at 8–9; 4 at 18–20.) Olympic argues there is no authority to terminate without cause in the Distribution Agreement and the Act does not grant Constellation the right to terminate without cause. (*Id.*)

Constellation argues “termination without cause is entirely consistent with the Act if the parties’ written agreement allows for termination without cause.” (Dkt. No. 19 at 2.)

1 Constellation cites the language in § 19.126.040(4) as evidence of the legislature’s intent to  
 2 permit without cause terminations by suppliers because of the inclusion of the “any reason other  
 3 than for cause” clause of this section and language providing a statutory remedy for distributors.  
 4 (Dkt. No. 19 at 2–3.)

5 Few courts have had the opportunity to interpret the precise language of the Act. The  
 6 retired Honorable Judge Ronald B. Leighton reviewed the language in a series of cases between  
 7 Pabst Brewing Company and several distributors that it terminated without cause. *Stein Distrib.*  
 8 *Inc. v. Pabst Brewing Co., LLC*, 2017 WL 2313489 (W.D. Wash. May 26, 2017); *Odom Corp. v.*  
 9 *Pabst Brewing Co., LLC*, 2017 WL 2313491 (W.D. Wash 2017); *Marine View Beverage, Inc. v.*  
 10 *Pabst Brewing Co., LLC*, 2017 WL 2313490 (W.D. Wash 2017).<sup>2</sup>

11 In *Stein*, Pabst moved to dismiss Plaintiff Stein Distributing Inc.’s complaint alleging that  
 12 Pabst was liable for breach of contract when it terminated the distribution agreement between the  
 13 two parties without cause and by failing to provide sixty days’ notice, as required by the Act.  
 14 *Stein*, 2017 WL 2313489 at \*1. Stein moved for partial summary judgment as to two legal  
 15 questions: “(1) whether the Act authorizes suppliers to terminate distributors’ contracts without  
 16 cause and (2) whether RCW 19.126.040(4) provides Stein’s sole remedy for relief.” *Id.*

17 Pabst argued the Act permitted without cause terminations and alternatively the  
 18 agreements with its distributors permitted without cause terminations because there was no  
 19 defined end date. *Id.* at \*3–4. Stein argued “the Act does not expressly or impliedly authorize  
 20 terminations without cause.” *Id* at \*2.

23       <sup>2</sup> Judge Leighton’s Orders appear to contain identical analysis on the issues related to the Act. For  
 24 purposes of clarity, the Court will cite to *Stein* for all citations herein.

1 In response, Pabst argued “Act’s acknowledgment of without-cause terminations in RCW  
2 19.126.040(4) is synonymous with its authorization of them[.]” *Id.* at \*3. The Court rejected  
3 this argument:

4 Pabst incorrectly asserts that the Act’s acknowledgment of without-cause  
5 terminations in RCW 19.126.040(4) is synonymous with its authorization of them.  
6 It is not. Had the Legislature intended to permit suppliers to cancel a distributor’s  
7 rights without cause, it would not have mandated that in most circumstances, a  
8 distributor must have an opportunity to cure the cause leading to its potential  
termination. The absence of “any reason other than for cause” from RCW  
19.126.040(2)’s list of exemptions from the Act’s notice and opportunity-to-cure  
requirements similarly evidences the Legislature’s intent that a distributor’s rights  
not be terminated without cause.

9 Had the Legislature intended to permit suppliers to cancel a distributor’s rights  
10 without cause, it also could have borrowed language from Colorado’s beer  
11 distributor statute: ‘The supplier shall have the right to terminate an agreement with  
a wholesaler *at any time* by giving the wholesaler at least ninety days’ written  
notice[.]

12 *Id.*

13 The Court agrees with Judge Leighton’s previous analysis. The Act states that the  
14 proceeding protections are deemed to be incorporated into every agreement of distributorship.  
15 Wash. Rev. Code § 19.126.040. The Parties agree that the present version of the statute applies  
16 to the dispute and that parties cannot contract around the protections offered by the Act. (Dkt.  
17 No. 44 at 4.) Thus, the Court determines that the language in the Act is incorporated into the  
18 Distribution Agreement.

19 The Court disagrees with Constellation’s contention that the “any reason other than for  
20 cause” language in § 19.126.040(4) impliedly authorized without cause terminations. (Dkt. No.  
21 19 at 2–3.) It does not. As Judge Leighton emphasized, § 19.126.040(2) requires suppliers to  
22 give distributors sixty days’ notice and a chance to rectify any claimed deficiency, with

1 exceptions for fraud, bankruptcy, or license revocation under § 19.126.030(5)<sup>3</sup> or in the event the  
 2 supplier acquires new rights to manufacture or distribute a new product. If the legislature  
 3 intended to permit terminations without cause, it would have added the “for cause” language into  
 4 § 19.126.040(2). It did not. And it is self-evident from the language of this section that  
 5 legislative authorization of without cause termination would let suppliers circumvent the sixty-day  
 6 notice and rectify period. *Stein*, 2017 WL 2313489, at \*3.

7 The Court’s interpretation is also supported by other Washington state courts that have  
 8 had the chance to review the language of § 19.126.040. In *Mt. Hood Beverage Co. v.*  
 9 *Constellation Brands, Inc.*, 63 P.3d 779 (Wash. 2003), for example, the Washington Supreme  
 10 Court noted that the Act required distributors “to give notice **and cause** before canceling  
 11 contracts with distributors.” *Id.* at 786 (emphasis added). Similarly, in *Birkenwald Distrib. Co.*  
 12 *v. Heublein, Inc.*, 776 P.2d 721 (Wash. Ct. App. 1989), the Court of Appeals clearly understood  
 13 the Act to impinge on supplier’s rights to terminate contracts at will. *See id.* at 723–24, 726.  
 14 The basis for the court in *Birkenwald*’s holding that the Act unjustifiably impinged on contracts  
 15 that existed prior to its enactment and thus “must be limited to distributorship agreements created  
 16 after its effective date” was the supplier’s reliance on their right to terminate their distributor “at  
 17 will.” *Id.* at 725–26.

18 Constellation argues that failure to interpret Section 4 of § 19.126.040 would lead to  
 19 surplusage. (Dkt. No. 46 at 4.) Specifically, they argue that the inclusion of language providing  
 20 distributors protection “for any reason other than for cause” and subsequent sections of the  
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22 <sup>3</sup> The Court also agrees with Plaintiff that the legislature “identified and listed five specific types  
 23 of terminations” that were exempt from § 19.126.040(2)’s requirement of notice and cure. (Dkt.  
 24 No. 49 at 7.) It is a basic rule of statutory interpretation that “expressio unius est exclusio alterius:  
*the expression of one is the exclusion of the other.*” *Landmark Dev., Inc. v. City of Roy*, 980 P.2d  
 1234, 1239 (1999).

1 statute would be meaningless if the legislature prohibited terminations without cause. (*Id.*) But  
2 this language is not rendered superfluous by such an interpretation. As noted in *Stein*, the  
3 legislature recognized that without cause terminations can happen. *Stein*, 2017 WL 2313489, at  
4 \*3. For example, in § 19.126.040(2) the legislature recognized a termination “result[ing] from a  
5 supplier acquiring the right to manufacture or distribute a particular brand and electing to have  
6 that brand handled by a different distributor” would be one such example of a termination  
7 without cause. Despite this recognition of certain scenarios of permissible without cause  
8 terminations, Constellation has not explained how the legislature intended to let suppliers  
9 circumvent all the protections offered in § 19.126.040(2) by allowing a supplier to terminate  
10 without cause.

11 Furthermore, if the legislature intended to preserve a supplier’s right to terminate without  
12 cause, it could have easily done so by adding specific language acknowledging that right, like the  
13 Colorado legislature has done. *See Colo. Rev. Stat. Ann. § 44-3-408*. Several courts have  
14 interpreted the Act to not permit termination without cause and the legislature has failed to  
15 amend this language despite having ample opportunity to do so. “The legislature, within  
16 constitutional constraints, is the body to make the policy decisions on this matter. The failure of  
17 the legislature to amend the statute . . . convinces us that it was and is the policy of the legislature  
18 to concur in that result.” *Buchanan v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen &*  
19 *Helpers*, 617 P.2d 1004, 1006 (1980)

20 The Court is convinced by logic of *Stein* and prior courts that the inclusion of language in  
21 § 19.126.040(4) of the Act referring to without cause terminations is not an authorization of them  
22 but merely an acknowledgement that “terminations without [cause] happen, and when they do, it  
23 mandates that the successor distributor purchase the terminated distributors’ inventory and

1 compensate it for its lost distribution rights.” *Id.* at \*6. Here, Olympic sought relief before  
 2 termination was completed and seeks to enforce the rights guaranteed by the Act. Therefore, the  
 3 Court finds that Plaintiff has a high likelihood of success on this claim.

4       2. The Washington Franchise Investment Protection Act

5       The Washington Franchise Investment Protection Act (“FIPA”) provides protections for  
 6 franchisees within the state, including prohibiting termination of a “franchise prior to the  
 7 expiration of its term except for good cause.” Wash. Rev. Code § 19.100.180(2)(j). Olympic  
 8 argues it meets the definition of a franchise under FIPA and therefore the Distribution  
 9 Agreement cannot be terminated without good cause. (Dkt. No. 4 at 21–24.)

10     Under FIPA, a “franchise” means:

11     (a) An agreement, express or implied, oral or written, by which:

12       (i) A person is granted the right to engage in the business of offering, selling,  
 13 or distributing goods or services under a marketing plan prescribed or  
 suggested in substantial part by the grantor or its affiliate;

14       (ii) The operation of the business is substantially associated with a  
 15 trademark, service mark, trade name, advertising, or other commercial  
 symbol designating, owned by, or licensed by the grantor or its affiliate; and

16       (iii) The person pays, agrees to pay, or is required to pay, directly or  
 17 indirectly, a franchise fee.

18     Wash. Rev. Code § 19.100.010(6).

19     The term “substantial association” is not defined under FIPA. Courts that have  
 20 interpreted the phrase relied on identical language in California’s franchise law. *E. Wind Exp., Inc. v. Airborne Freight Corp.*, 974 P.2d 369, 373 (Wash. Ct. App. 1999) (recognizing that  
 21 “California’s franchise act [] contains the same definition of franchise as Washington’s 1991  
 22 FIPA”). “To satisfy the ‘substantial association’ prong of FIPA’s definition of a franchise,  
 23 Plaintiffs must show a substantial association with [supplier]’s trade name or trademarks beyond  
 24

1 the act of distributing [supplier]’s products.” *Atchley v. Pepperidge Farm, Inc.*, 2012 WL  
 2 6057130, at \*9 (E.D. Wash. Dec. 6, 2012).

3 Olympic argues it is “substantially associated” with Constellation’s trademarks and  
 4 advertising because the Distribution Agreement granted Olympic the right to use Constellation  
 5 trademarks in connection with distribution and advertising of its products. (Dkt. No. 4 at 23.)  
 6 Olympic also alleges it “was required to invest substantial money, time, and resources to  
 7 advertise and promote Constellation’s trademarks and products through local advertising, in-  
 8 store promotions and displays, and point-of-sale materials, all of which use and convey the  
 9 Constellation Brand trademarks.” (*Id.*)

10 Constellation argues that Olympic’s use of Constellation’s trademark alone is not enough  
 11 to satisfy the substantially associated prong of the FIPA test. (Dkt. No. 19 at 17.) Constellation  
 12 also argues that Olympic cannot meet this element because it distributes products for companies  
 13 other than Constellation. (Dkt. No. 19 at 17–18.)

14 Olympic has thus far presented no evidence that its customers associated it with the  
 15 Constellation trademark. *See Gabana Gulf Distribution, Ltd. v. GAP Int’l Sales, Inc.*, No. C 06-  
 16 02584 CRB, 2008 WL 111223, at \*5 (N.D. Cal. Jan. 9, 2008), *aff’d*, 343 F. App’x 258 (9th Cir.  
 17 2009); *see also Atchley*, 2012 WL 6057130, at \*9 (noting that plaintiffs use of their supplier’s  
 18 trademarks did not “rise to the level of a ‘substantial association’ because Plaintiffs **did not**  
 19 **prove that any other person believed or could believe** that Plaintiffs were associated with”  
 20 their supplier in a capacity beyond distributorship) (emphasis added). Olympic admitted they did  
 21 not submit such affirmative evidence, though they suggest that the Court may infer such an  
 22 association. (Dkt. No. 44 at 27–28.)

Olympic relies heavily on *Gentis v. Safeguard Bus. Sys., Inc.*, 71 Cal. Rptr. 2d 122 (Cal Ct. App. 1998) to argue that the presence of a robust marketing plan that “requires advertising and promotion of the supplier’s brands that is directed at customers” is sufficient to meet the substantial association prong. (Dkt. No. 26 at 13.) However, the appellate court in *Gentis* did not consider whether customers could reasonably associate the plaintiff in the case with their supplier’s trademarks and so this case is inapposite. 71 Cal Rptr. at 123. At this time, therefore, the Court cannot conclude Olympic has a high likelihood of success on the merits as to this claim.

Nonetheless, because the Court finds Olympic has a high likelihood of success as to its claim under the Act, the Court finds the first prong of the preliminary injunction standard is satisfied.

### **C. Likelihood of Irreparable Harm in the Absence of Preliminary Relief**

The phrase “irreparable harm” is a term of art, which means that a party has suffered a wrong which cannot be adequately compensated by remedies available at law, such as monetary damages. See *eBay Inc. v. Merc Exchange, L.L.C.*, 547 U.S. 388, 391 (2006); see also *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021) (“Irreparable harm is ‘harm for which there is no adequate legal remedy, such as an award for damages.’”); *Los Angeles Memorial Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)) (“The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”). Although it is well established that monetary injuries are generally not considered irreparable, *Los Angeles Memorial Coliseum*, 634 F.2d at 1202, “[t]he loss of . . . an ongoing business representing many years of effort and the livelihood of its . . . owners, constitutes irreparable harm. What plaintiff stands to lose cannot

1 be fully compensated by subsequent monetary damages.” *hiQ Labs, Inc. v. LinkedIn Corp.*, 31  
 2 F.4th 1180, 1188 (9th Cir. 2022) (quoting *Roso-Lino Beverage Distributors, Inc. v. Coca-Cola*  
 3 *Bottling Co. of New York, Inc.*, 749 F.2d 124, 125–26 (2d Cir. 1984) (per curiam)); *Stuhlbarg*  
 4 *Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) (evidence of  
 5 threatened loss of prospective customers or goodwill supports an irreparable harm finding).

6 Olympic argues “Constellation’s termination will wipe away Olympic’s good will built  
 7 up around” its broad set of product offerings. (Dkt. No. 4 at 26.) Citing declarations from its  
 8 Vice President of Sales and Business Development Manager, Olympic argues the harm suffered  
 9 by Constellation’s termination will harm its reputation and goodwill with its other remaining  
 10 suppliers. (*Id.* at 26-27.) Olympic contends that due to its broad product offerings it is chosen as  
 11 the “shelf set captain” for the stores it supplies. (*Id.*; Dkt. No. 6 at 6–7.) The shelf set captain “is  
 12 chosen by the retail store from the distributors who provide the most products to the store.”  
 13 (Dkt. No. 6 at 7.) The shelf set captain can place its products in places throughout a store that  
 14 consumers are more likely to see and buy its products. (*Id.* at 6–7.) This allows Olympic to  
 15 build up smaller brands in its portfolio of products, brands that it would not be able to sell as well  
 16 if it did not receive this preferential treatment. (*Id.*)

17 Olympic’s Vice President of Sales attests that if Constellation terminates the Distribution  
 18 Agreement, Olympic will no longer be shelf set captain for many of the stores it supplies. (Dkt.  
 19 No. 6 at 7–8.) This would cause Olympic to lose additional revenue from decreased sales and  
 20 goodwill amongst its remaining suppliers as it has a reputation in the industry for being a shelf  
 21 set captain where suppliers can get the products in more favorable locations within stores. (*Id.* at  
 22 8.)

1           Constellations responds to Olympic's contentions by arguing it will not suffer any harm  
 2 by the Court's denial of the preliminary injunction because Olympic was offered compensation  
 3 for its distribution rights by the successor distributor. (Dkt. No. 19 at 22–23.) Specifically,  
 4 Constellation argues that the purported \$70 million offer for its distribution rights would offset  
 5 the \$5.5 million loses Olympic alleges it will face in the event of termination. (*Id.*)  
 6 The case law is clear. Although "monetary injuries" are not irreparable, loss of goodwill and  
 7 reputational harm are.

8           Constellation fails to address any of the cases cited by Olympic in its briefing on the issue  
 9 of irreparable harm. (Dkt. Nos. 19 at 22–23; 33 at 11–12.) Nor does Constellation provide any  
 10 analysis regarding Olympic's contention that termination of the Distribution Agreement would  
 11 lead to a loss of reputation and goodwill amongst its remaining suppliers and customers. (*Id.*)

12           As described by Olympic, a termination of the Distribution Agreement would create a  
 13 cascading effect of shrinking catalogue of products it offers to its customers, reducing its ability  
 14 to sell its products in those stores, and harming its relationships with its current and potential  
 15 suppliers. The Court finds this would irreparably harm the goodwill and reputation Olympic has  
 16 built up over decades in the industry. A harm that cannot be adequately compensated by  
 17 monetary damages.

#### 18           **D. A Balancing of Equities Tips in Favor of a Preliminary Injunction**

19           Olympic argues the balance of equities favors Olympic because "failing to issue that  
 20 injunction will harm Olympic's goodwill, reputation and other aspects of its business that the  
 21 Distribution Agreement says are difficult to quantify. Olympic will also become an unprofitable  
 22 company, losing \$ 5.5 million dollars a year." (Dkt. No. 4 at 29.)

1 Constellation disputes Olympic's calculation of its potential financial losses. (Dkt. No.  
 2 19 at 23.) Constellation also notes it previously contacted many of its retailers that the change of  
 3 distributors will commence on November 9, 2022. (Dkt. No. 33 at 12.)

4 As described above, the termination of the Distribution Agreement would cause Olympic  
 5 irreparable harm. Olympic has alleged "the termination of its second largest supplier and most  
 6 critical to its growth will be a Hindenburg type event, making it a highly unprofitable business  
 7 and requiring many employees to be fired." (Dkt. No. 28 at 5.)

8 Constellation sent notices to many of its retailers of an impending transition of  
 9 distributors. Constellation states "[t]he notices were sent to minimize the disruption in the  
 10 marketplace resulting from the transfer of distribution rights." (Dkt. No. 33 at 12.) But  
 11 Constellation did this despite its awareness that Olympic and the successor distributor have not  
 12 agreed on the fair market value of the distribution rights, as required by Constellation's own  
 13 interpretation of the consequence of a without cause termination under the Act.

14 The Court is persuaded the balance of equities tips in Olympic's favor.

#### 15 **E. An Injunction is in the Public Interest**

16 "The public interest may be declared in the form of a statute." *Golden Gate Rest. Ass'n*  
 17 v. *City & Cnty. of San Francisco*, 512 F.3d 1112, 1127 (9th Cir.2008) (internal quotation marks  
 18 omitted). Where the elected branches have enacted a statute based on their understanding of  
 19 what the public interest requires, this Court's "consideration of the public interest is  
 20 constrained[,] for the responsible public officials . . . have already considered that  
 21 interest." *Id.* at 1126–27. Both Parties dispute whether Constellation's termination without  
 22 cause violates Washington law. (Dkt. Nos. 4 at 29–30; 19 at 24.)

23 The Washington Legislature clearly finds a public interest in the relationship between  
 24 beer distributors and suppliers. Wash. Rev. Code § 19.126.010. It also recognized the  
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1 importance of distributors' ability to continue their distribution rights that they codified  
2 "protections which are deemed to be incorporated into every agreement of distributorship." §  
3 19.126.040. Thus, the Court finds a public interest in maintaining that status quo in the  
4 continued enforcement of the Distribution Agreement.

5 **IV CONCLUSION**

6 Accordingly, and having considered Plaintiff's motion (Dkt. No. 4), the briefing of the  
7 parties, and the remainder of the record, the Court finds and ORDERS:

- 8 1. Plaintiff's motion for a preliminary injunction (Dkt. No. 4) is GRANTED.
- 9 2. The Court's temporary restraining orders (Dkt. Nos. 40, 45) are CONVERTED into  
10 the following preliminary injunction:
  - 11 a. Defendants are ENJOINED from terminating the Distribution Agreement  
12 without cause.
  - 13 b. This Order binds the following who receive actual notice of this Order: (A)  
14 the defendants, (B) defendants' officers, agents, servants, employees, and  
15 attorneys, and (C) any other persons who are in active concert or participation  
16 with one or more defendants or any of defendants' officers, agents, servants,  
17 employees, or attorneys.
- 18 3. Defendants' motion for reconsideration (Dkt. No. 46) is DENIED.

19  
20 Dated this 12th day of December, 2022.

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24  
David G. Estudillo  
United States District Judge